

No. PD-0243-21

**In The
Court of Criminal Appeals
Of The State of Texas
Austin, Texas**

FILED
COURT OF CRIMINAL APPEALS
6/15/2021
DEANA WILLIAMSON, CLERK

**ALLEN CHRISTOPHER LANCLOS,
Petitioner**

vs.

THE STATE OF TEXAS

BRIEF ON THE MERITS

COMES NOW, Allen Christopher Lanclos and provides this Court his Brief on the Merits regarding the judgment affirming the decision regarding his application for writ of habeas corpus seeking bail reduction in Cause No. 09-20-00296-CR in the Ninth Court of Appeals, and in Cause No. 61738 in the 356th District Court in Hardin County, Texas.

Respectfully submitted,

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Appellee:	The State of Texas
Trial Prosecutors:	Rebecca Walton and Michelle Townsend Hardin County Courthouse P.O. Box 1409 Kountze, Texas 77625
Appellate Prosecutors:	Rebecca Walton and Michelle Townsend Hardin County Courthouse P.O. Box 1409 Kountze, Texas 77625
Trial Judge:	Hon. Steven Thomas 356 th District Court 300 W. Monroe Street Kountze, Texas 77625

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STATEMENT REGARDING ORAL ARGUMENT

Appellant no longer requests oral argument unless the Court feels it is necessary.

I. STATEMENT OF THE CASE

This is an appeal from a denial of pre-trial habeas relief relating to Lanclos's bond. On August 23, 2020, Lanclos was arrested for the offense of assault on public servant. Lanclos's bonds were set at \$2,250,000.00.¹ On September 14, 2020, still detained and still not indicted, Lanclos filed an Application for Writ of Habeas Corpus seeking relief under the Texas Code of Criminal Procedure Article 17.15.² A hearing was held on October 9, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.15 Writ.³ Lanclos's bonds were not reduced and the Court ultimately never ruled on the Writ.

On November 24, 2020, still detained and still not indicted, Lanclos filed an Application for Writ of Habeas Corpus seeking relief under the Texas Code of Criminal Procedure Article 17.151.⁴ A hearing was held on December 18, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.151 Writ.⁵ The State did not appear at the hearing.⁶ Lanclos demonstrated to the Court that he had been in custody for more than ninety days and had not been indicted and thus the State could not be ready for trial.⁷ Subsequent to

¹ CR 13-14.

² CR 2.

³ CR 12; RR 2, 4 – 9.

⁴ CR 8.

⁵ RR 3, 4.

⁶ RR 3, 4.

⁷ RR 3, 4 – 6.

that hearing, the District Court set bonds totaling \$1,500,000.00.⁸ The Court had previously taken evidence that Lanclos was indigent.⁹

As of the date of filing of Appellant's Brief in this Court, Lanclos has still not been indicted and is still detained in custody on a bond he cannot afford. **As of June 11, 2021, Lanclos will have been in custody 295 days without being indicted.**

II. STATEMENT OF PROCEDURAL HISTORY

On March 10, 2021, the Court of Appeals affirmed the decision regarding Lanclos' application for writ of habeas corpus seeking bail reduction. This petition has been timely filed with the Clerk of the Court of Appeals.

III. STATEMENT OF FACTS

Lanclos was arrested for three counts of assault on police officers on August 23, 2020. Lanclos's bonds were initially set at \$2,250,000.00.¹⁰ A hearing was held on December 18, 2020 before Hon. Steven Thomas of the 356th District Court, Hardin County, Texas on Lanclos's 17.151 Writ.¹¹ The State chose not to appear at the hearing.¹² Lanclos demonstrated to the Court that he had been in custody for

⁸ CR 12.

⁹ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

¹⁰ CR 13-14.

¹¹ CR 8.

¹² RR 3, 4.

more than ninety days and had not been indicted and thus the State could not be ready for trial.¹³

On December 28, 2020, Lanclos's bonds were reduced to a total of \$1,500,000.00.¹⁴ Lanclos cannot afford such bond and no bondsman will make that bond.¹⁵ It was only after this court granted this Petition, that the State of Texas proceeded to the grand jury and obtained an indictment on June 9, 2021. On June 9, 2021, he had been in custody for 293 days. **The best evidence that he cannot afford this bond, is that he has not yet bonded out of jail.**

SUMMARY OF THE ARGUMENT FOR REVIEW

The Texas Code of Criminal Procedure requires a trial court to release an accused on personal recognizance or a *bond affordable to that individual* if the State is not ready for trial within ninety days of the arrest. The trial court erred by not releasing Lanclos on a personal bond or reducing Lanclos's bond in amount affordable to him, which the Code clearly requires as relief. Moreover, though, the Court of Appeals erred in affirming this ruling by shifting the burden to Lanclos regarding what constitutes an "affordable bond."

¹³ RR 3, 4 – 6.

¹⁴ CR 12.

¹⁵ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

IV. GROUNDS FOR REVIEW

GROUND FOR REVIEW ONE: *The court of appeals erred by not reversing the trial court's abuse of discretion in denying Lanclos a personal bond or reducing Lanclos's bond to an amount affordable to him, which the Code of Criminal Procedure clearly requires as relief.*

A. The Clear Directive of the Code

Article 17.151 of the Texas Code of Criminal Procedure provides that a defendant who is detained pending trial “must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial . . . within: (1) 90 days from the commencement of his detention if he is accused of a felony.”¹⁶ The statute is mandatory with no discretion afforded the trial court.¹⁷ Unless evidence suggests otherwise, if the accused cannot afford a bond in any amount, the trial court should elect to release him on personal bond.¹⁸ This Court has never held Article 17.151 to be optional or to involve discretion on the part of the trial court. The Statute specifically describes the two options: provide a personal bond or reduce the bail to an amount that the accused can afford. Here, the Court did not inquire into what Lanclos could afford, but Lanclos reurged that bonds totaling \$2.25 million were unaffordable.

¹⁶ Tex. Code Crim. Proc. Ann. art. 17.151 § 1.

¹⁷ See *Rowe v. State*, 853 S.W.2d 581, 583 (Tex. Crim. App. 1993) (en banc)

¹⁸ See e.g. *Ex parte Hicks*, 262 S.W.3d 387, 389 (Tex. App. – Waco 2008); citing *Rowe*, 853 S.W.2d at 582, *Ex parte Kernahan*, 657 S.W.2d 433, 434-35 (Tex. Crim. App. 1983).

In this case, the facts are undisputed. Lanclos cannot afford an extremely high bond. The State has still not indicted Lanclos as of the date of filing this Petition. The Court of Appeals, while correctly laying out the standard under 17.151, affirmed the absurdly high bond decision of the trial court.

Moreover, though, the notion that \$1,500,000 bonds would be readily affordable to any citizen is absurd. Using a traditional bail bondsman, that would require a payment of \$150,000 just for the bond. A bond that high is patently punitive and intended as an instrument of oppression.

B. *Ex Parte Gill* Application to Article 17.151

In *Ex parte Gill*, the issue present in this matter was at bar.¹⁹ The Appellants in *Gill*, were charged and arrested for murder, and their bail was set at \$1,000,00.00 each.²⁰ Prior to filing their application for habeas relief, Appellants filed three bail reductions.²¹ The trial court reduced their bail to \$100,000.00 and then to \$50,000.00; however, Appellants bail was set in an amount not affordable to them.²² After being in custody for over ninety days, Appellants filed applications for writs of habeas corpus under Article 17.151 of the Texas Code of Criminal Procedure;

¹⁹ *Ex parte Gill*, 413 S.W.3d 425 (Tex. Crim. App. 2013)

²⁰ *Id.* at 426

²¹ *Id.*

²² *Id.* at 427

however, the trial court denied their request after a hearing before the court.²³ Appellants appealed the decision to the court of appeals; however, the court of appeals affirmed the trial court's decision based upon *Ex parte Matthews*.²⁴

Due to the court of appeals being split on the issue, the Court of Criminal Appeals granted Appellants' petitions for discretionary review.²⁵ The Court of Criminal Appeals held that, under the plain language of Article 17.151, a trial court must release a defendant from custody on personal bond or by reducing the amount of bail where he has been continuously incarcerated for more than ninety days and the State is not ready for trial.²⁶ This Court reasoned that "[t]he first sentence of Article 17.151 unequivocally declares that a defendant detained pending trial 'must be released' if the State is not ready for trial within the appropriate amount of time."²⁷ The Court also held, factors used in setting the amount of bail found in Article 17.15 do not apply to an Article 17.151 application for release.²⁸

Here, Lanclos has been in custody since the date of his arrest on August 23, 2020, well over ninety days. Without an indictment, the State cannot be ready for

²³ *Id.*

²⁴ *Id.* Citing *Ex parte Matthews*, S.W.3d 884 (Tex. App. – Beaumont 2010, no pet.)

²⁵ *Id.* at 428

²⁶ *Id.* at 427–28 (Tex. Crim. App. 2013)

²⁷ *Id.* at 430 (quoting Tex. Code Crim. Proc. Ann. art. 17.151, § 1)

²⁸ *Id.* at 432

trial.²⁹ As a threshold matter, then, “the existence of a charging instrument is an element of State preparedness.”³⁰ Therefore, it is clear that Appellant has been in custody for over ninety days and the State is not ready to proceed with trial.

C. *Rowe v. State*’s Application to the Amount of the Bail Reduction

While the trial court granted Lanclos’s writ and reduced his bond to \$1,500,000.00, that is an amount not affordable to him and violates Article 17.151.³¹ In *Rowe v. State*,³² this issue was at bar. In *Rowe*, Appellant sought release under Article 17.151 of the Texas Code of Criminal Procedure.³³ It was undisputed that Appellant had been arrested on murder and aggravated assault allegations, and the State was not ready for trial ninety days after Appellant’s arrest.³⁴ Appellant sought habeas relief, specifically requesting release upon a personal bond.³⁵ The trial court refused to release Appellant on personal bond, and subsequently reduced the bond on each case by \$1,000 (murder from \$10,000.00 to \$9,000.00, and aggravated

²⁹ See *Ex parte Castellano*, 321 S.W.3d 760, 763 (Tex. App.-Fort Worth 2010, no pet.) (“The State cannot announce ready for trial when there is no indictment.”).

³⁰ *Kernahan v. State*, 657 S.W.2d 433, 434 (Tex. Crim. App. 1983).

³¹ See CR, 6; affidavit of Kristy Lanclos.

³² 853 S.W.2d 581 (Tex. Crim. App. 1993)

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

assault from \$4,000.00 to \$3,000.00).³⁶ Appellant appealed the trial court's decision, and the court of appeals affirmed the trial court's decision.³⁷

In *Rowe*, the Court of Criminal Appeals held, that where it was undisputed that the State was not ready for trial ninety days after an accused's arrest, a judge had only two options under Article 17.151: either release the accused upon personal bond or reduce the bail amount.³⁸ Furthermore, if the court chooses to reduce the amount of bail required, it must reduce bail required to an amount that the record reflects an accused can make in order to effectuate release.³⁹

Here, the record from the first Writ hearing reflects that Appellant does not have the resources necessary to make a bond in the amount of \$2,250,000.00 – the original bond amount.⁴⁰ The Court of Appeals held that the reduction to bonds totaling \$1.5 million was reasonable. The Court reasoned that Lanclos did not provide any evidence that a reduction to that amount was unaffordable to him. The Court's decision was untethered from any evidence or guiding principal, though. The Court chose an arbitrarily high bond amount and the Court of Appeals

³⁶ *Id.* at 582

³⁷ *Id.* Note, the court of appeals relied on factors outside of Article 17.151 to deny Appellant's requested relief, which ultimately led to the reversal of their decision. *Rowe*, 853 S.W.2d at 582.

³⁸ *Id.*

³⁹ *Id.* at 582, n. 1

⁴⁰ RR 2, 5 (offering affidavit of Kristy Lanclos, CR 6).

erroneously affirmed reasoning that the evidence was not sufficient to show that \$1.5 million was unaffordable.

V. Conclusion

Poor defendants disproportionately find themselves incarcerated until the resolution of their case, not due to the nature of the offense, but based upon their economic status. Whether a bond is \$500,000.00 or \$50,000.00, the end result remains the same for poor and indigent defendants; they remain incarcerated until the disposition of their case. The inability to make the bond set by the court, coupled with the State's lack of readiness for trial, leads to poor and indigent citizens languishing in jail in spite of being considered innocent. Article 17.151 preserves the presumption of innocence by ensuring that "an accused as yet untried and unreleased on bond will not suffer 'the incidental punitive effect' of incarceration during any further delay attendant to prosecutorial exigency."⁴¹

The trial court failed to follow the mandate of Article 17.151 by denying Lanclos a personal bond in this matter. It was only after this court granted this Petition, that the State of Texas proceeded to the grand jury and obtained an indictment on June 9, 2021. On June 9, 2021, he had been in custody for 293 days.

The best evidence that he cannot afford this bond, is that he has not yet bonded

⁴¹ *Ex parte Jones*, 803 S.W.2d 712, 716 (Tex.Crim.App.1991) (quoting *Ex parte Green*, 688 S.W.2d 555, 557 (Tex.Crim.App.1985))

out of jail. As such, Lanclos asks this Court to reverse the decision of the trial and appellate courts in denying the relief sought by writ. Specifically, Lanclos asks the Court to order Lanclos's release on personal bond or bonds totaling \$15,000 or less. Lanclos further requests that the mandate for this decision issue immediately.⁴²

VI. Prayer

We request this Court grant any and all relief to Appellant as his entitled to receive.

Respectfully submitted,

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⁴² See TEX. R. APP. P. 18.6 (allowing the appellate court to issue the mandate with its judgment in an accelerated appeal); *Ex parte Carson*, 215 S.W.3d 921, 924 (Tex. App.-Texarkana 2007, no pet.) (issuing the mandate immediately in an article 17.151 bail reduction case).

CERTIFICATE OF COMPLIANCE

In accordance with Rule 9.4(i)1, there are 2,173 words including endnotes and footnotes.

/s/ Ryan W. Gertz

Ryan W. Gertz

CERTIFICATE OF SERVICE

This is to certify that on June 14, 2021, a true and correct copy of the foregoing document was served on the Hardin County District Attorney's Office via e-file.

/s/ Ryan W. Gertz

Ryan W. Gertz

Automated Certificate of eService

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